



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 33 of the Housing (Scotland) Act 1988.

Chamber Ref: FTS/HPV/EV/22/1976

Re: Property at 48 Bishops Park, Midcalder, Livingston, EH53 0SS (“the Property”)

Parties:

Mr Stewart Bruce, 4 Hillview Lane, Murieston, Livingston, EH54 9HP (“the Applicant”)

Miss Kerry Fraser, 48 Bishops Park, Midcalder, Livingston, EH53 0SS (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member) and Frances Wood (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Repossession.

1. Introduction

This Hearing concerned an Application for repossession in relation to an assured tenancy under Section 33 of the Housing (Scotland) Act 1988. The Hearing took place by video conference.

2. Attendance and Representation

The Applicant was represented by Jennifer Anderson, Clarity Simplicity Ltd, 34 Woodlands Road, Glasgow, G3 6UR.

Mr Stewart Bruce, Mr Raymond Bruce and Ms Heather Bruce were present to give evidence by video.

The Respondent was not present.

3. Preliminary Matters

- a) This Hearing had been adjourned before evidence had been heard because Immediately prior to commencement of the Hearing the Respondent had lodged with the Tribunal administration a request to postpone the Hearing for medical reasons. She stipulated she would follow the email with medical evidence. The Tribunal issued a Note detailing same and directed that medical evidence be lodged.
- b) The Tribunal considered that the Respondent was not represented and had been fully engaged in the previous two Case Management Discussions fixed in this case. The Tribunal adjourned the Hearing but asked for medical evidence to support the Respondent's non-attendance.
- c) The Tribunal noted no medical evidence had been lodged by the Respondent and she was not in attendance. No contact had been made by the Respondent. The Tribunal decided to proceed. In the last Note issued by the Tribunal it was made clear that In the Respondent's further absence at any future hearings The Tribunal may need to proceed .
- d) The Applicant's representative confirmed she was assisted in proceedings by her colleagues Rosa Ferry and Anesya Ramzan.
- e) The Tribunal asked that all witnesses give their evidence separately and the Applicant's representative explained she had made such arrangements.
- f) There were no other preliminary matters.

4. Summary of Oral Evidence given to the Tribunal

a) Mr Stewart Bruce – the Applicant - Summary

1. The Applicant adopted the terms of his Affidavit which had been lodged. He advised he was a director of his own business. He had invested in property and assisted his parents and his wife's parents to purchase property years ago. This was part of their pension arrangements. The property concerned was purchased by his wife's father. His wife's father, Ian Clough, decided he no longer wished the responsibility of owning the property and transferred to his daughter, Heather Bruce. Mr Clough died a few years ago.
2. The Applicant's position was that the Respondent received a new tenancy agreement and AT5. The Respondent signed the agreement to say she got it.

The Applicant said that his father, Raymond Bruce took responsibility for the properties. He did the appropriate paperwork.

3. The Applicant went on to advise that his father had undertaken local authority training and was experienced. The Applicant sought to recover the property as he could not continue to not receive rent. He said the Respondent has been in the property for a long period of time but that she was not trustworthy. He referred to broken payment arrangements and a failed trust deed. He questioned the Respondent's motives and priorities.
4. The Applicant said that he suffers from high blood pressure and he has had to sell some of his property stock due to the situation. It was not he who dealt with the commencement of the tenancy it was his father who did that as his representative. The Applicant said at the time he had 13 properties. His father managed the paperwork and he delegated the responsibility to him. His father would do general paperwork and the 6 monthly visits for properties. The Applicant said he had taken up with the local authority and housing about how long the process had taken and he was aware that landlords were leaving the sector.

b) Heather Bruce – Oral Summary

1. Heather Bruce said she was a property director and married to the Applicant. She adopted the terms of her Affidavit which was lodged. She said the time of the commencement of the tenancy was a time which resonates with her emphatically. It was the start of her father's cancer diagnosis. It was important she said for her to speak to the tenant to alleviate concerns that her father had to deal with any more complaints from neighbours. She said her father had not died then, he died 6 years later and this was not the reason for the transfer of tenancy.
2. Mrs Bruce could not recall the exact date she visited the tenant with the documents. She said it was a long time ago. She has done due diligence and asked her IT people to look back and they found an email from her office manager to call the tenant back on the 11th October 2012. She said they have a number of rental properties and are very conscientious. She said she visited the property during the period from 13th October to just before the tenancy commencement in November 2012. She could not provide the date. She had a conversation with the Respondent directly to ask not to communicate with her father. She personally gave new bank details to the Respondent who made a payment using them on 8th November 2012.
3. Mrs Bruce said that Raymond Bruce, her father in law always prepared the paperwork for the properties. He was at the meeting with her and recalls giving to the Respondent a white envelope was left there along with banking details. She said the papers were left with the Respondent to look at and read. Mrs

Bruce said the Respondent should have been given time to read and absorb the information. The records show it was signed on the 7th November 2023. It was served before the paperwork was signed she said. She said that all paperwork for their properties was always served prior to tenancy commencement.

4. Mrs Bruce said there has been difficulties with neighbours calling her screaming about parties, in the property and complaints during covid. Mrs Bruce said because of the situation she was not the same person that entered into this process. They are now on their 3rd property that they have sold and she said they had to tell 3 tenants they are selling their homes due to this application. They are looking in excess of 20k this has cost them as the Respondent has not paid rent and there has been a strain on her marriage, health, business and they have 25 staff. She said she feels like a victim. It has been very sad to tell other tenants that has been good to leave.
5. Mrs Bruce said she put all the paperwork with the tenancy agreement, banking details and AT5 in the envelope. She handed all the paperwork to the tenant with Raymond Bruce, Stewart's father . He would come on set days as he lived in the west. He signed the tenancy with her at another visit.

c) Raymond Bruce – Oral Summary.

1. Mr Bruce adopted the terms of his Affidavit which was lodged. He said when Heather Bruce took over from her father who had owned the property all the relevant paperwork was transferred over. He said he visited the tenant with Heather Bruce and the relevant paperwork was handed over. He said it was signed on that date . He said that it was many years ago and he cannot remember. He explained that the cannot recollect more than one meeting and would normally hand over all the relevant paperwork and all tenants and all relevant paperwork was signed at the time. He has never had any problems with any other property or tenant disputing the paperwork. He said Heather Bruce was with him when he signed the paperwork but there is every possibility he could have dealt with the paperwork on his own but that the AT5 was signed in front of him though he cannot remember if the papers were already there.
2. He explained he has gone on training from West Lothian council and The Cyrenians and he went to a number of meetings from the council on letting. This is the first time he has come across a situation like this. He said the Respondent was given the appropriate paperwork when she was transferred over. Mr Bruce said the tenancy commenced on 1st Nov 2012 and he signed it on 7th November 2012. He said he would have signed it in the presence of the tenant. He said he could not go back to recall this given the passage of time.

6. Submissions

The Applicant's representative submitted that the evidence from the Applicant and his witnesses provided evidence of the factual question on whether the AT5 was served prior to commencement of the tenancy.

The lease entered into was on 1st November 2012 and was stated as a short assured tenancy. The applicant had offered to lease and this commenced on 1st November 2012. The Respondent agreed to the terms by way of her signature on 7th November.

The Respondent had previously resided under a separate tenancy by the Applicant's father in law. Heather Bruce then took over the tenancy and it required a new tenancy agreement to be formed. The Applicant's representative said that given the tenant was residing in the property there was no clear date of the tenant moving in and taking residence. Without the clear date of moving in there was a need to rely on the evidence as to when the AT5 was served and signed.

The Applicant's representative said that the AT5 was given to the tenant in advance of the commencement. It was delivered in person together and then Raymond Bruce visited on a separate date. It is the position irrespective of the date that the Respondent had been provided the AT5 and thus making the tenancy a short assured. The Applicant's representative and the notice to bring it to an end was valid. The Applicant's representative submitted the AT5 was served prior but that the Respondent also acknowledged this in terms of clause 30 for the tenancy. Reference was made to the authority of Key housing v Cameron at page 47, which had been lodged. She submitted in accepting the contractual terms the Respondent acknowledged receipt of the AT5.

The Applicant's representative submitted the balance of proof was on a balance of probabilities and the tenant has failed to actively engaged, delayed proceedings, and given no genuine evidence. The submission was the Respondent's previously acknowledged rent arrears, was not a credible witness and that her previous statements should not be relied upon. The submission was that there are significant rent arrears, complaints for the property, financial hardship, stress and anxiety in terms of the tenancy.

7. Findings in Fact and Law.

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent and the Hearing should proceed. The Respondent had been served and was present during 2 previous Case Management Discussions. The Hearing was previously postponed on the Respondent's request to ensure her engagement but there was no further engagement and the Respondent did not provide the medical evidence directed of her. The Tribunal considered in terms of the**

- interests of justice and the overriding objective of the Tribunal that the Hearing should proceed and a decision be made in absence.
2. The Tribunal was satisfied that the Applicant was the heritable proprietor of the Property.
 3. The Tribunal was satisfied that the tenancy was in terms of Section 32(1) of the 1988 Act, a short assured tenancy for not less than 6 months and in relation to which a prescribed notice namely a valid AT5 had been served before creation of the short assured tenancy
 4. In terms of Section 33 of the 1988 Act the Tribunal considered that the Short Assured Tenancy had reached its ish.
 5. Further the Tribunal was satisfied that no tacit relocation was operating, no further contractual tenancy was in existence and a valid Notice to Quit had been served on the Respondent terminating the tenancy with the necessary notice given to the Respondent.
 6. Accordingly, in terms of Section 33 of the 1988 Act the Tribunal considered it was appropriate to grant an order against the Respondent for possession of the Property.
 7. The Tribunal noted the Local Authority under the 2016 had been notified.
 8. On the evidence available to the Tribunal the Respondent had an adult son and has been experiencing health issues. The Applicant has endured financial hardship in terms of the property due to rent arrears, complaints from neighbours regarding the property and significant stress in not being able to sell same. The Tribunal found an Order was reasonable on balance on the evidence before them in terms of the Coronavirus (Scotland) Act 2020.

8. Reasons for Decision

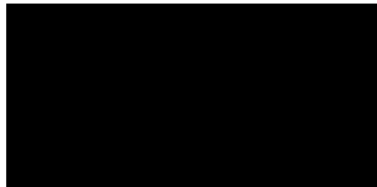
The Tribunal determined the Application in the absence of the Respondent. She had previously taken part in proceedings before evidence was led. She said she had not been left paperwork and had signed and received the paperwork on the same day on the 7th November 2012. This led the Tribunal to need to hear evidence given the dispute in fact. The Tribunal heard evidence from the Applicant, Heather Bruce and Raymond Bruce. The Applicant had not dealt with the paperwork. Mrs Bruce could not provide a date as to when she visited the tenant but she was clear she did so and left the paperwork with the Respondent. Mr Raymond Bruce could not clearly recollect matters due to the passage of time and his evidence appeared to differ from his affidavit. Relations between the Applicant and the Respondent appeared very poor and the Applicant made allegations against the Respondent in terms of her credibility. The Tribunal had regard to Key Housing Association v Cameron 1999 Hous LR 47 and Express Investment Co Ltd v Brown EV/19/2335, 17/1/20. Reference was also made to Stalker, Evictions in Scotland, 2nd Edition page 252. The Applicant and his witnesses appeared to resent providing evidence but the matter of the service of the AT5 was crucial and had been disputed in fact. The application was made in terms of Section 33 only of the Housing (Scotland) Act 1988 despite the accepted rent arrears and potential grounds in regards the management of the tenancy. However the Tribunal on balance in the absence of formal evidence from the Respondent accepted

on balance that the AT5 was in terms of Section 32 of the Act served before creation of the tenancy. The tenancy was one which was the same as the tenancy previously in place and the Respondent throughout both tenancies continued to be in occupancy and no doubt aware of the nature and type of tenancy.

In any event the Respondent had agreed to in terms of clause 30 of the tenancy that she had received the AT5 before the creation of the tenancy and in terms of the authorities referred to the Tribunal was prepared to accept in absence of the Respondent and given the authorities that the terms of Section 32 had been complied with and the tenancy was a Short Assured Tenancy.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.



Legal Member/Chair

Date: 8th September 2023